

DEDUCTIBILITY OF INTANGIBLE ASSET EXPENSE**AMENDMENTS**

2020 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends the addition to income provisions of the corporate income tax code.

Highlighted Provisions:

This bill:

- ▶ amends an addition to income provision to provide the circumstances under which a corporation may not deduct a royalty or other expense paid to an entity related by common ownership for the use of an intangible asset.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides retrospective operation.

Utah Code Sections Affected:

AMENDS:

59-7-105, as last amended by Laws of Utah 2019, Chapter 466

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **59-7-105** is amended to read:

59-7-105. Additions to unadjusted income.

In computing adjusted income the following amounts shall be added to unadjusted income:

(1) interest from bonds, notes, and other evidences of indebtedness issued by any state of the United States, including any agency and instrumentality of a state of the United States;

(2) the amount of any deduction taken on a corporation's federal return for taxes paid by a corporation:

(a) to Utah for taxes imposed by this chapter; and

(b) to another state of the United States, a foreign country, a United States possession, or the Commonwealth of Puerto Rico for taxes imposed for the privilege of doing business, or exercising its corporate franchise, including income, franchise, corporate stock and business and occupation taxes;

(3) the safe harbor lease adjustment required under Subsections 59-7-111(1)(a) and (2)(a);

(4) capital losses that have been deducted on a Utah corporate return in previous years;

(5) any deduction on the federal return that has been previously deducted on the Utah return;

(6) charitable contributions, to the extent deducted on the federal return when determining federal taxable income;

(7) the amount of gain or loss determined under Section 59-7-114 relating to a target corporation under Section 338, Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation;

(8) the amount of gain or loss determined under Section 59-7-115 relating to corporations treated for federal purposes as having disposed of its assets under Section 336(e), Internal Revenue Code, unless such gain or loss has already been included in the unadjusted income of the target corporation;

(9) adjustments to gains, losses, depreciation expense, amortization expense, and similar items due to a difference between basis for federal purposes and basis as computed under Section 59-7-107;

(10) the amount withdrawn under Title 53B, Chapter 8a, Utah Educational Savings Plan, from the account of a corporation that is an account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is withdrawn, if that amount withdrawn from the account of the corporation that is the account owner:

(a) is not expended for:

(i) higher education costs as defined in Section 53B-8a-102.5; or

(ii) a payment or distribution that qualifies as an exception to the additional tax for distributions not used for educational expenses provided in Sections 529(c) and 530(d), Internal Revenue Code; and

(b) is subtracted by the corporation:

(i) that is the account owner; and

(ii) in accordance with Subsection 59-7-106(1)(r);

(11) the amount of the deduction for dividends paid, as defined in Section 561, Internal Revenue Code, that is allowed under Section 857(b)(2)(B), Internal Revenue Code, in computing the taxable income of a captive real estate investment trust, if that captive real estate investment trust is subject to federal income taxation; and

(12) any deduction on a return filed under this chapter for a royalty or other expense ~~[paid to a captive insurance company]~~ that a corporation pays to an entity related by common ownership for the use of an intangible asset where the intangible asset is owned by the [captive insurance company and used, in exchange for a royalty or other fee, by an entity related by common ownership to the captive insurance company:] entity related by common ownership unless the corporation can demonstrate to the satisfaction of the commission or a court on judicial review in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review, that:

(a) for the same taxable year, the entity related by common ownership is subject to income taxes on the royalty or other expense:

(i) under this chapter;

(ii) under the laws of another state; or

(iii) by a foreign government that has in force an income tax treaty with the United States; or

(b) (i) the corporation made the transaction giving rise to the royalty or other expense primarily for a valid business purpose other than the avoidance of the taxes due under this chapter; and

(ii) the entity related by common ownership is not primarily engaged in the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of intangible assets.

Section 2. **Retrospective operation.**

This bill has retrospective operation for a taxable year beginning on or after January 1, 2020.